

SERVICE DATE – APRIL 3, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42142

CONSUMERS ENERGY COMPANY

v.

CSX TRANSPORTATION, INC.

Decided: April 2, 2015

On January 13, 2015, Consumers Energy Company (Consumers) filed a complaint challenging the reasonableness of rates established by CSX Transportation, Inc. (CSXT) for unit train coal transportation service in shipper-supplied rail cars to Consumers' generating station near West Olive, Mich., from CSXT's established railroad interchange with BNSF Railway Company in the vicinity of Chicago, Ill. Consumers alleges that CSXT possesses market dominance over the traffic and that CSXT's rates are unreasonable under both the Stand-Alone Cost constraint and the Revenue Adequacy constraint. CSXT filed its answer to the complaint on February 2, 2015.¹ The Board entered a protective order in this proceeding on March 18, 2015.

On March 16, 2015, Consumers filed a motion to compel discovery from CSXT, seeking the production of documents in response to several of its production requests and substantive answers in response to several of its interrogatories. In its March 26, 2015 reply, CSXT claims that Consumers filed its motion without conferring with CSXT. CSXT argues that most, if not all, of the discovery concerns could have been narrowed or resolved had Consumers conferred with CSXT.²

Based on a review of the substantive assertions presented in CSXT's reply, it appears that many of the issues raised in Consumers' motion to compel discovery can be either narrowed or resolved between the parties. For example, in its reply, CSXT states that it "will respond to [Consumers'] narrowed request" relating to answers sought by Interrogatories 1 and 2, that it "will make every effort to identify responsive information" relating to Requests for Production 8, 9, and 10, that it is "willing to produce documents, in response to Request for Production 115,"

¹ CSXT has also filed a motion to dismiss Consumers' Revenue Adequacy claim, which is pending before the Board.

² CSXT's Reply 1, 5.

and that it “withdraws its relevance objection with respect to Request for Production 116 and agrees to produce the requested [documents].”³

Because the parties have not yet conferred on the issues raised in Consumers’ motion to compel discovery, and because it appears that many of these issues can be resolved without Board intervention, the parties are directed to meet and confer on these discovery issues. The parties are further instructed to report to the Board by April 10, 2015, on the status of these discovery issues and whether there are any outstanding issues from the motion to compel discovery that cannot be resolved by the parties.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Consumers and CSXT are directed to meet and confer on the discovery issues raised in Consumers’ motion to compel discovery. The parties are further instructed to report to the Board by April 10, 2015, on the status of these discovery issues and whether there are any outstanding issues from the motion to compel discovery that cannot be resolved by the parties.

2. This decision is effective on its service date.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

³ CSXT’s Reply 7, 10, 12.